

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 8, 2023 at 10:30 a.m.

**THE HEARING ON THE MOTION TO VALUE COLLATERAL OF
UNITED STATES DEPARTMENT OF TREASURY, INTERNAL
REVENUE SERVICE WILL BE HEARD AT 11:30 A.M., IN
CONJUNCTION WITH THE HEARING ON DEBTOR'S MOTION
FOR APPROVAL OF THE DISCLOSURE STATEMENT**

1. [22-21864](#)-E-11 DAVID FOYIL
[DEF-4](#)

**MOTION TO VALUE COLLATERAL OF
UNITED STATES DEPARTMENT OF
TREASURY, INTERNAL REVENUE
SERVICE
4-20-23 [[103](#)]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2023. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of the Internal Revenue Service is XXXXXXXXXX

The Motion filed by David Eugene Foyil (“Debtor”) to value the secured claim of the Internal Revenue Service (“IRS” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 105. Debtor is the owner of the following real and personal property:

130 Poppy Ln, Ione, California - Movant’s Motion refers to a 2945 Hartvickson Lane, Valley Springs, California, with legal descriptions of the Hartvickson Lane address attached as Exhibit A. Motion, Dckt. 105 at ¶ 2. Movant’s attached exhibit is a Deed of Trust which does not mention the Hartvickson Lane address, rather, it describes a Poppy Lane address. Debtor’s Voluntary Petition states their address is 130 Poppy Lane, Ione, California, which is listed in their Schedules A/B. Dckts. 1, 36. It appears the reference to the Hartvickson Lane address was a typographical error.

At the hearing, XXXXXXXXXX

Value - \$700,000.00

Liens and Encumbrances -

Amador County Tax Assessor - \$11,781.00

Lien of U.S. Bank Trust National Association - \$778,030.15

Personal Property -

2015 Nissan Armada

Value - \$25,000

Liens and Encumbrances - \$39,388

Household Goods and Furnishing

Value - \$5,500

Liens and Encumbrances - none

Electronics

Value - \$1,000

Liens and Encumbrances - none

Wearing Apparel

Value - \$500

Liens and Encumbrances - none

Jewelry

Value - \$1,500

Liens and Encumbrances - none

Cash

Value - \$100

Liens and Encumbrances - none

Checking Account

BBVA Compass

Value - \$(150)

Liens and Encumbrances - none

Business

Value - \$0

Liens and Encumbrances - none

Retirement Accounts

Value - \$19,667

Liens and Encumbrances - none

Term Life Insurance

Value - \$0

Liens and Encumbrances - none

Net Equity Available to Other Secured Creditors

\$28,267

As the owner, Debtor's opinion of value is evidence of the assets' value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Movant notes the following tax lien priorities:

LIEN DATE	CREDITOR	ACCRUED SECURED BALANCE
7/2/2013	IRS	\$ 19,479.18
12/6/2013	FTB	\$ 56,141.32
8/19/2014	IRS	\$137,295.63
11/10/2015	FTB	\$104,372.96
8/2/2016	IRS	\$ 93,873.12
10/19/2021	FTB	\$ 91,458.87

Motion, Dckt. 105 ¶ 16. Movant states the indebtedness owed to Creditor dates 7/2/2023 is the only secured portion of Creditor's claim, due to the lack of equity available and competing interest of creditor Franchise Tax Board.

CREDITOR'S OBJECTION

Creditor filed an objection on May 25, 2023. Dckt. 134. Creditor objects to the valuation of Movant's residence on the grounds that the opinion is conclusory, speculative, and unreliable. Creditor does not object to the valuation of the personal property assets.

Creditor provides the declaration of Dennis Thornton-Wiatt, a Senior Bankruptcy Specialist employed by Creditor. Dckt. 135. Declarant states that he is providing expert testimony as to the value of the property, concluding that the real provides evidence that the real property should be valued at \$1,091,500, rather than \$700,000, and argues Debtor's credibility is questionable, given their history of filings in the bankruptcy court.

While an expert can give his or her opinion (conclusion) as to value, Federal Rule of Evidence 702 provides that opinion testimony if:

- (a) the expert's scientific, technical, or other specialized knowledge **will help the trier of fact to understand the evidence or to determine a fact in issue;**
- (b) the testimony is based on sufficient facts or data;
- (c) the **testimony is the product of reliable principles and methods;** and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

While the witness dictates his findings to the court, he does not provide the court with evidence of how he reached his conclusion. Commonly, an expert testifying as to value of real property provides the analysis of comparable properties, why and how adjustments are made to comparable properties, and evidence of comparable properties that have been sold or listed for sale.

The witness does provide his testimony of what he has read somewhere that Amador County Assessor has assessed the property for tax purposes at \$1,089,000, and his hearsay testimony that the online real estate website operated by Redfin values it at \$1,089,000.

However, such “argument” in the Declaration shows that Creditor intends to provide the court with competent, credible, admissible evidence of value.

DISCUSSION

It appears to the court there is a genuine dispute as to the value Movant’s real property. Although a debtor’s opinion is evidence of an asset’s value, Movant has not provided additional evidence, such as an appraisal or otherwise, evidencing the real property’s value as \$700,000.

At the very least, Creditor has the right to conduct discovery and obtain the opinion of an expert to provide evidence of the value of the real property.

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by David Eugene Foyil (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**

**THE HEARING ON THE MOTION TO VALUE COLLATERAL OF
CALIFORNIA FRANCHISE TAX BOARD WILL BE HEARD AT
11:30 A.M., IN CONJUNCTION WITH THE HEARING ON
DEBTOR’S MOTION FOR APPROVAL OF THE DISCLOSURE
STATEMENT**

2. [22-21864-E-11](#) **DAVID FOYIL**
[DEF-5](#)

**MOTION TO VALUE COLLATERAL OF
CALIFORNIA FRANCHISE TAX
BOARD
4-20-23 [\[108\]](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on April 21, 2023. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Value Collateral and Secured Claim of the Franchise Tax Board is XXXXXXX</p>

The Motion filed by David Eugene Foyil (“Debtor”) to value the secured claim of the Franchise Tax Board (“FTB” or “Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 110. Debtor is the owner of the following real and personal property:

130 Poppy Ln, Ione, California -

Value - \$700,000.00

Liens and Encumbrances -

Amador County Tax Assessor - \$11,781.00

Lien of U.S. Bank Trust National Association - \$778,030.15

Personal Property -

2015 Nissan Armada

Value - \$25,000

Liens and Encumbrances - \$39,388

Household Goods and Furnishing

Value - \$5,500

Liens and Encumbrances - none

Electronics

Value - \$1,000

Liens and Encumbrances - none

Wearing Apparel

Value - \$500

Liens and Encumbrances - none

Jewelry

Value - \$1,500

Liens and Encumbrances - none

Cash

Value - \$100

Liens and Encumbrances - none

Checking Account

BBVA Compass

Value - \$(150)

Liens and Encumbrances - none

Business

Value - \$0

Liens and Encumbrances - none

Retirement Accounts

Value - \$19,667

Liens and Encumbrances - none

Term Life Insurance

Value - \$0

Liens and Encumbrances - none

Net Equity Available to Other Secured Creditors

\$28,267

As the owner, Debtor's opinion of value is evidence of the assets' value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Movant notes the following tax lien priorities:

LIEN DATE	CREDITOR	ACCRUED SECURED BALANCE
7/2/2013	IRS	\$ 19,479.18
12/6/2013	FTB	\$ 56,141.32
8/19/2014	IRS	\$137,295.63
11/10/2015	FTB	\$104,372.96
8/2/2016	IRS	\$ 93,873.12
10/19/2021	FTB	\$ 91,458.87

Motion, Dckt. 108 ¶ 18. Movant states the indebtedness owed to Creditor dated 12/16/2013 is the only secured portion of Creditor's claim, due to the lack of equity available and competing interest of creditor Internal Revenue Service.

DISCUSSION

Creditor has not filed any opposition to this Motion. However, given the real property valuation issues raised by creditor Internal Revenue Service, *See* Docket Control No. DEF-4, it appears there may be more equity to support Creditor's tax liens than what Movant's Motion is suggesting.

In light of the two related Contested Matters to avoid tax liens are before the court and the limited, ephemeral evidence of value presented by Movant, the apparent desire of the Internal Revenue Service to conduct discovery and present admissible evidence of value (having told the court that the IRS has found information online showing a substantially greater value), the court cannot at this time determine the value from the evidence presented.

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by David Eugene Foyil (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2023. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease is granted.

Geoffrey M. Richards, Chapter 7 Trustee, (“Movant”) moves to extend the deadline to assume or reject a residential real property lease located at the address commonly known as 620 Maple Street, West Sacramento, California (“Residence”). The Residence is currently subject to a rental agreement, which ends on October 31, 2023.

Debtor Abdul Munif (“Debtor”) owns and rents four residential real properties. Trustee states they need additional time to either assume or reject the lease because Trustee and their broker are in the process of determining which, if any, of the four residential properties are best suited for marketing for sale.

The deadline for accepting or rejecting the lease is June 9, 2023. 11 U.S.C. §§ 365(d), 348(a). The Motion requests that the deadline be extended to and through September 7, 2023. 11 U.S.C. §

365(d)(1) allows additional time to accept or reject a lease so long as the court fixes additional time within the original 60-day period, which in this case is June 9, 2023.

The court finds that in the interest of Movant to complete investigation of the residential real properties, namely to determine which of the rental properties are best suited for marketing for sale, there is sufficient cause to justify an extension of the deadline. The Motion is granted, and the deadline for Movant to assume or reject the lease of the Residence is extended to and including September 7, 2023.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease filed by Geoffrey M. Richards, Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline for Movant to assume or reject Debtor Abdul Munif’s (“Debtor”) residential lease at the real property commonly known as 620 Maple Street, West Sacramento, California is extended to and including September 7, 2023.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2023. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p>The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease is granted.</p>

Geoffrey M. Richards, Chapter 7 Trustee, (“Movant”) moves to extend the deadline to assume or reject a residential real property lease located at the address commonly known as 620A Maple Street, West Sacramento, California (“Residence”). The Residence is currently subject to a rental agreement, which ends on September 30, 2023.

Debtor Abdul Munif (“Debtor”) owns and rents four residential real properties. Trustee states they need additional time to either assume or reject the lease because Trustee and their broker are in the process of determining which, if any, of the four residential properties are best suited for marketing for sale.

The deadline for accepting or rejecting the lease is June 9, 2023. 11 U.S.C. §§ 365(d), 348(a). The Motion requests that the deadline be extended through September 30, 2023. 11 U.S.C. § 365(d)(1)

allows additional time to accept or reject a lease so long as the court fixes additional time within the original 60-day period, which in this case is June 9, 2023.

The court finds that in the interest of Movant to complete investigation of the residential real properties, namely to determine which of the rental properties are best suited for marketing for sale, there is sufficient cause to justify an extension of the deadline. The Motion is granted, and the deadline for Movant to assume or reject the lease of the Residence is extended to and including September 7, 2023.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Deadline to Assume or Reject Residential Real Property Lease filed by Geoffrey M. Richards, Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline for Movant to assume or reject Debtor Abdul Munif’s (“Debtor”) residential lease at the real property commonly known as 620A Maple Street, West Sacramento, California is extended to and including September 30, 2023.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2023. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Sell Property is xxxxxxx.

The Bankruptcy Code permits Geoffrey M. Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1212 West Wind Drive, Chico, California ("Property").

The proposed purchaser of the Property is Maria A. Heredia, and the terms of the sale are:

- A. Purchase Price: \$800,000.00 cash
- B. Deposit: \$15,000, increased to \$40,000.00 upon court approval of the sale
- C. Broker's Commission: 6.00%

D. Close of Escrow: Forty-five (45) days after court approval.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of American Builders and Contractors Supply Co., Inc. (“Creditor”). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has provided evidence stated to establish that Creditor has agreed to release its lien to permit the sale of Property to close without payment from escrow. Movant’s Supplement to the Motion, Dckt. 134; Movant’s Declaration, Dckt. 135.

The Trustee’s Declaration begins with several paragraphs in which he states that he is informed as believes, but does not state that he has actual personal knowledge to so testify under penalty of perjury. Declaration, ¶¶ 3,4,8; Dckt. 128. Federal Rule of Evidence requires that for a witness to be competent to testify the witness must have personal knowledge of the matter that is the subject of the testimony:

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

In his Supplemental Declaration, the Trustee further testifies with respect to having an “Agreement” with Creditor for the court to strip it lien rights from the Property:

4. American Builders and Contractors Supply Co., Inc. (“ABC”), has through counsel agreed to release its judgment lien as to the Real Property, to permit the sale to proceed without payment to ABC from escrow.

Supp. Dec., ¶ 4; Dckt. 134.

It is not clear with whom ABC’s counsel has told about ABC agreeing to release its lien, who heard the counsel say this, and who is repeating what was heard to be said.

There is no agreement signed by ABC with the trustee agreeing to the release of the lien, no statement filed by ABC’s counsel stating that it consents to the court stripping off ABC’s property rights, or other documentation of such affirmative consent as required by 11 U.S.C. § 363(f)(2).

From the Supplemental Declaration, the Trustee’s testimony indicates that ABC does not consent to the court stripping off the lien, but instead ABC itself will release it through escrow.

DISCUSSION

Overbidding Procedure

Movant has requested the following overbid procedure:

1. All overbids shall be on substantially the same terms and conditions as the pending sale.
2. The first overbid shall be in the minimum amount of \$810,000.
3. Subsequent overbids shall be in minimum increments of \$10,000.
4. Persons wishing to overbid must provide a cashier’s check payable to the Trustee in the amount of \$40,000 prior to the prospective purchaser’s first overbid at the hearing.
5. The successful bidder shall be required to pay the balance of the purchase price and close the sale on the terms in the Sale Agreement. Parties may agree to close the sale at a later date.
6. A back-up bid may be approved and the Property may be sold to the back-up bidder at the option of the back-up bidder.

Court Announced Sale

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**

Evidence of Consent Required by 11 U.S.C. § 363(f)(2)

Silence is not deemed consent for the court to take away property rights of a party. While some bankruptcy court's accept a non-response as consent, the court cannot find any Ninth Circuit authority that the property rights can be stripped from a creditor pursuant to 11 U.S.C. § 363(f)(2) by a mere non-response to a motion. The evidentiary burden is on the moving party to obtain the extraordinary relief available pursuant to 11 U.S.C. § 363(f).

However, at the hearing, counsel for the Movant **XXXXXXX**

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows an additional \$100,000 in unencumbered funds to pay unsecured claims.~~

~~Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$48,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Sell Property filed by Geoffrey M. Richards, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that Geoffrey M. Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Maria A. Heredia or nominee ("Buyer"), the Property commonly known as 1212 West Wind Drive, Chico, California ("Property"), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$800,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dekt. 131, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~C. The Property is sold free and clear of the lien of American Builders and Contractors Supply Co., Inc., Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), **with the lien of such creditor also not attaching to any proceeds of the sales**~~

~~_____ D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

~~_____ E. The Chapter 7 Trustee not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's broker, Parkway Real Estate Co.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2023. By the court's calculation, 8 days' notice was provided. The court set the hearing for June 8, 2023. Dckt. 25.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, Creditors, Subchapter V Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

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The Motion to Impose the Automatic Stay is denied without prejudice as moot, the automatic stay having been statutorily imposed as provided in 11 U.S.C. § 362(a).

Solano County Black Chamber of Commerce, Inc. ("Debtor in Possession") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case, specifically, to

creditor Partnership HealthPlan of California (“Creditor”). Motion, Dckt. 12 at 1:26-28. This is Debtor’s first bankruptcy petition pending in the past year.

In the Motion, Dckt. 12, the Debtor in Possession does not cite to any statutory provision for the court to “impose” an automatic stay. The Motion does cite two California Court of Appeal cases relating to the notice that is to be given in getting a default unlawful detainer judgment entered.

In the Debtor in Possession’s Points and Authorities, no statutory basis for the court to impose an automatic stay is cited or discussed. The Debtor in Possession does cite to one bankruptcy court decision from the Middle District of North Carolina; *In re Baldarso*, 336 B.R. 98 (Bankr. MD NC 2006).

When the court did a LEXIS-NEXIS request for the case reported at 336 B.R. 98, what was produced was not *Baldarso*, but *In re Havner*, 336 B.R. 98 (Bankr. MD NC 2006). The *In re Havner* decision is listed in the text which is stated to be stated in *In re Baldarasso*.

Searching the citation history of *In re Havner*, the court has identified the decision *In re Baldassaro*, 338 B.R. 178 (Bankr. NH 2006). It appears that there was a clerical error in citing to *Baldassaro*.

In *In re Baldassaro*, the debtor was Scott Baldassaro, an individual. Mr. Baldassaro filed a Chapter 13 that was dismissed. Within one year of the dismissal of that case, Mr. Baldassaro filed a second Chapter 13 case. The issue in *Baldassaro* was the application of 11 U.S.C. § 362(c)(3)(A), which provides (emphasis added):

(3) if a single or joint case is **filed by** or against a **debtor** who is an **individual** in a case under chapter 7, 11, or 13, and if a single or joint **case** of the debtor was **pending within the preceding 1-year period but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) **the stay under subsection (a)** with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor on the 30th day after the filing of the later case; . . .**

From the plain language of this statute, it is applicable to an individual debtor who has a bankruptcy cases dismissed and then files a second bankruptcy case within one year of the dismissal of the prior case.

Baldassaro then discusses the application of 11 U.S.C. § 362(c)(3)(B) which provides for the court to continue the automatic stay and not have it terminate for the individual debtor pursuant to 11 U.S.C. § 362(c)(3)(A).

For *In re Havner*, 336 B.R. 98 (Bankr. MD NC 2006), the court was again addressing a second Chapter 13 case filed by an individual debtor, Christopher Havner, within one year of dismissal of a prior bankruptcy case. The court in *Havner* was addressing the continuation of the automatic stay as

provided in 11 U.S.C. § 362(c)(3)(B) for the debtor and not allow it to terminate as provided in 11 U.S.C. § 362(c)(3)(A).

Neither *In re Baldassaro* nor *In re Havner* address a bankruptcy court “imposing” an automatic stay for a non-individual debtor.

Much of the Motion argues why the unlawful detainer judgment should be vacated by the state court.

CREDITOR’S OPPOSITION

Creditor filed an opposition to the Motion to Impose the Stay on June 5, 2023. Dckt. 27. Creditor provides a detailed history of their relationship with Debtor. Creditor indicates on February 7, 2022, Creditor executed a commercial lease with Debtor concerning the real property commonly known as 4820 Business Center Dr., Suite 110, Fairfield California (“Real Property”). Creditor states they are the lessor and Debtor is the lessee. Creditor details to the court events that occurred prior to the bankruptcy case, indicating they received a pre-petition default judgment against Debtor in an unlawful detainer case resulting Debtor defaulting on lease payments. Creditor seeks to regain possession of the Real Property.

Creditor does not provide any discussion of federal law relating to the court “imposing” an automatic stay or whether the relief requested by the Debtor in Possession is proper under applicable federal law. Creditor’s Opposition argues facts and circumstances of the default and litigation in the State Court.

APPLICABLE LAW

The Debtor is not an individual, but is a corporation. Petition, ¶ 6; Dckt. 1. Debtor commenced this Chapter 11 Bankruptcy Case on May 23, 2023, and is now serving as the debtor in possession, 11 U.S.C. § 1107, no trustee having been appointed in this case.

A search of the court’s records indicates that Debtor has not filed any prior bankruptcy cases.

As the bankruptcy attorneys well know, Congress provides in 11 U.S.C. § 362(a) for an automatic stay (statutory injunction) to automatically go into effect upon the filing of a bankruptcy case, no order of the court required. 11 U.S.C. § 362(a) provides (emphasis added):

(a) Except as provided in subsection (b) of this section, **a [bankruptcy] petition filed** under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, **operates as a stay, applicable to all entities, of—**

(1) the commencement or **continuation**, including the issuance or employment of process, **of a judicial**, administrative, or other action or **proceeding against the debtor that was** or could have been **commenced before the commencement of the [bankruptcy] case** under this title, **or to recover a claim against the debtor** that arose before the commencement of the case under this title;

- (2) the **enforcement, against the debtor or against property of the estate**, of a **judgment obtained before the commencement of the case** under this title;
- (3) **any act to obtain possession of property of the estate** or of property from the estate or to **exercise control over property of the estate**;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

As one sees, the automatic does not “merely” protect the debtor, but provides extensive protection to property of the bankruptcy estate. The property of the bankruptcy estate is created by 11 U.S.C. § 541, which provides:

§ 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, **all legal or equitable interests of the debtor in property** as of the commencement of the case.

(2) All interests of the debtor and the debtor’s spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor’s spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

The bankruptcy estate includes all of the debtor's assets as of the commencement of the case and specified post-petition assets. This includes desks, computers, file cabinets, and other personal property of the debtor that automatically becomes property of the bankruptcy estate. This property of the bankruptcy estate is protected by the automatic stay. ^{FN.1.}

FN. 1. The court notes that there are statutory exceptions to automatic stay and to what is property of the bankruptcy estate. No assertion has been made by Creditor that there is any applicable exception that applies to Creditor from the statutory stay (injunction) created by Congress in 11 U.S.C. § 362(a).

Here, Debtor filed a voluntary Chapter 11 case, pursuant to 11 U.S.C. § 301(a). Therefore, the stay became effective once the petition was filed. 11 U.S.C. § 362(a).

Thus, by operation of Federal Law, the petition date, the automatic stay operates as an injunction to any action taken to enforce the pre-petition default judgment as well as any act to obtain possession of or exercise control over property of the Bankruptcy Estate or continuation of the State Court litigation against the Debtor (in which now the Debtor in Possession, as the fiduciary in the place of a bankruptcy trustee, would be the real party in interest with respect to any property of the bankruptcy estate). 11 U.S.C. §§ 362(a)(1), (2), (3).

The automatic stay has gone into effect in this case by operation of law. No legal basis has been shown for the court to “impose” an “automatic stay,” or there being any need for injunctive relief given the statutory automatic stay (injunction) imposed by Congress pursuant to 11 U.S.C. § 362(a).

The request for the court to “impose an automatic stay” is rendered moot by the statutory provisions of 11 U.S.C. § 362(a).

The Motion is denied without prejudice as moot, the court confirming the automatic stay provisions having already been imposed as of the filing of the bankruptcy petition, pursuant to 11 U.S.C. § 362(a).

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Impose the Automatic Stay filed by Solano County Black Chamber of Commerce, Inc. (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot, the automatic stay (statutory injunction) imposed Federal Law, 11 U.S.C. § 362(a) is and has been in full force and effect since the filing of the bankruptcy petition by Debtor on May 23, 2023.

FINAL RULINGS

7. [23-21407-E-11](#) **BELLA VIEW CAPITAL, LLC** **ORDER TO SHOW CAUSE - FAILURE**
Jesse Ortiz **TO PAY FEES**
5-12-23 [13]

Final Ruling: No appearance at the June 8, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on May 13 and 14, 2023. The court computes that 26 and 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338.00.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the June 8, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and creditors as stated on the Certificate of Service on May 3 and 4, 2023. The court computes that 36 and 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$32.00.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the June 8, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and parties requesting special notice as stated on the Certificate of Service on April 29 and 30, 2023. The court computes that 40 and 39 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$32.00.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.